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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

STATE ex rel. RICHARD DOLAN,)	Cause No. CV-03-167-M-DWM
individually and on behalf of himself, his)	
minor children and others similarly situated,)	
DENISE HAYMAN, individually and on)	
behalf of herself, minor children and others)	
similarly situated, and GREAT FALLS)	
PUBLIC SCHOOL ELEMENTARY)	
SCHOOL DISTRICT NO. 1 and HIGH)	
SCHOOL DISTRICT NO. 1A,)	
)	
Plaintiffs,)	COMPLAINT OF
and)	INTERVENOR/PLAINTIFF
)	STATE OF MONTANA
STATE OF MONTANA,)	
)	
Intervenor/Plaintiff,)	
v.)	
)	
PPL MONTANA, LLC, a Delaware Limited)	
Liability Corporation; PPL SERVICES)	
CORP., a Delaware Corporation; AVISTA)	
CORPORATION, a Washington)	
Corporation, PACIFICORP, an Oregon)	
Corporation; and JOHN DOES 2 through 10,)	
)	
Defendants.)	

Intervenor/Plaintiff, the State of Montana (hereinafter “Montana”) hereby complains and alleges against Defendants as follows:

NATURE OF ACTION

This is an action seeking a declaratory judgment, compensatory damages, and attorneys’ fees for Defendants’ use of school trust land without compensation to the school trust as required by law and to require that Defendants compensate the school trust for full market value of the interest in the trust lands used and occupied by them.

THE PARTIES

1. Intervenor/Plaintiff, Montana is one of the fifty states of the Union granted statehood in 1889.

2. Plaintiffs Richard Dolan and Denise Hayman, residents of the State of Montana and Gallatin County, Montana, are taxpayers and the parents of children attending public schools in Montana.

3. Plaintiffs Great Falls Elementary School District No. 1 and High School District No. 1A are Montana public school districts located in Great Falls, Cascade County, Montana.

4. Defendant PPL Montana, LLC is a Delaware Limited Liability Corporation registered to do business in Montana, with its principal place of business in Wilmington, Delaware. PPL Montana LLC owns and operates several dams in Montana that are situated, in part, on State school trust lands and generate hydroelectric power.

5. Defendant PPL Services Corp. is a Delaware corporation registered to do business in Montana, with its principal place of business in Allentown, Pennsylvania.

Defendant PPL Montana LLC is a wholly owned subsidiary of PPL Services Corp.

6. Defendant Avista Corporation is a Washington corporation registered to do business in Montana, with its principal place of business in Spokane, Washington. Avista Corporation owns and operates the Noxon Rapids Dam on the Clark Fork River in Montana. The Noxon Rapids Dam is situated, in part, on State school trust lands and generates hydroelectric power.

7. Defendant PacifiCorp is an Oregon corporation registered to do business in Montana, with its principal place of business in Portland, Oregon. PacifiCorp owns and operates the Bigfork Dam on the Swan River in Montana. The Bigfork Dam is situated, in part, on State school trust lands and generates hydroelectric power.

8. Defendants John Does 2 through 10 are persons (either individuals, corporations, partnerships, or other entity), whose identities currently are unknown to Intervenor/Plaintiff, but who currently own, or have owned in the past, dams and/or power sites located on State school trust lands, and by reason of such ownership are liable to Intervenor/Plaintiff for the full market value of the State school trust lands or interest upon which their dams and/or power sites or their appurtenances are located.

JURISDICTION AND VENUE

9. The diversity of the Intervenor/Plaintiff and Defendants provides the basis for jurisdiction in this Court, pursuant to 28 U.S.C. § 1332(a)(1). The Intervenor/Plaintiff is one of the fifty states of the Union and the other Plaintiffs are citizens of Montana. All

Defendants are corporations who are incorporated in states other than Montana and whose principal places of business are in states other than Montana. 28 U.S.C.

§ 1332(c)(1). The amount in controversy also exceeds \$75,000, as required by 28 U.S.C. § 1332(b).

10. Venue is proper in this Division under Rules 3.1(a)(5) and 3.3(a)(1) of the U.S. District Court for the District of Montana, as venue is proper under the laws of Montana in any of several counties in the Missoula Division in which the Defendants' dams and/or power sites are located. See Mont. Code Ann. §§ 25-2-118(2), 25-2-122(2), and 25-2-1023.

GENERAL ALLEGATIONS

11. This action is necessary to protect and preserve the State lands/school trust lands from use without compensation and to prevent and remedy the injury resulting to Intervenor/Plaintiff.

12. Under section 10 of the Montana Enabling Act of February 22, 1889 (hereinafter the "Enabling Act"), the federal government granted Montana certain lands to be used for the support of common schools. Section 11 of the Enabling Act further provided that such lands may be leased for the development of hydroelectric power.

13. The 1889 Montana Constitution accepted these lands and provided that they would be held in trust consistent with the terms of the Enabling Act and thereby creating the School Trust.

14. The 1972 Montana Constitution perpetuated the terms of the School Trust, when it provided as follows:

All lands of the state that have been or may be granted by congress, or acquired by gift or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of as hereafter provided for the respective purposes for which they have been or may be granted, donated, or devised.

Article X, § 11(1).

15. The United States Supreme Court consistently has held that the federal government holds ownership of the beds of all navigable waters in trust for future states, to be granted to such states upon entry to the Union and that the newly-admitted states assume sovereignty on an equal footing with the established states.

16. Montana entered the Union of the United States of America on November 8, 1889, as the 41st state. Upon admission to the Union, Montana gained title to the beds of all navigable waters in Montana.

17. Under Article X, section 2(4) of the 1972 Montana Constitution, “[a]ll grants of land or money made from the United States for general educational purposes or without special purpose” are part of the public school fund and are considered state school trust lands. The beds of navigable waters in Montana represent grants of land from the United States and qualify as school trust lands that are held in benefit for public education within Montana.

18. Montana may not dispose of any interest in school trust lands unless “the full market value of the estate or interest disposed of, to be ascertained in such manner as provided by law, has been paid or safely secured to the states.” Mont. Const. Art. X, § 11(2).

19. Although Montana law prohibits the sale of “state lands constituting power sites or parts of power sites capable of developing hydroelectric energy in commercial

quantities,” Mont. Code Ann. § 77-4-201, both Montana law and the Enabling Act authorize the leasing or licensing of state lands and school trust lands for the development of power sites for periods of up to 50 years. Mont. Code Ann. § 77-4-208.

20. The term “power site,” as provided under Montana law, includes “not only the state-owned land on which the dam is constructed, but also each separate tract of such land which will become part of the reservoir and which in and of itself makes an essential contribution to the value of the power site as a whole of not less than 5 percent of the entire value of such power site.” Mont. Code Ann. § 77-4-208.

21. Montana law requires that rental payments on leases for power sites “must be paid annually or semiannually and such rental shall not be less than the fair market value of the estate interest disposed of through the granting of the lease or license, such value to be carefully ascertained from all available sources.” Mont. Code Ann. § 77-4-208.

22. The Federal Power Act reserves federal public land included in a proposed power project. The Federal Power Act does not reserve, however, State land that is to be used in a federal power project. Congress granted the beds of navigable waters to Montana when it joined the Union in 1889 and, therefore, Montana owns the beds of navigable waters free of any encumbrance later imposed by the Federal Power Act.

23. Montana law specifically provides for the joint development of power sites when the federal government under a number of circumstances through a lease or license system. Mont. Code Ann. § 77-4-210.

24. Montana requires the owners of dams and power sites, including federally regulated and approved dams and power sites, to pay the fair market value for a lease of

other alienation of those State lands that the dams and power sites occupy. Mont. Code Ann. § 77-4-210.

25. Noxon Raids Dam is located on the Clark Fork River and is owned by Defendant Avista Corporation. The Clark Fork River is a navigable river. Noxon Rapids Dam was constructed in 1959. Montana has never been reimbursed for the value of the Stateland/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other forms of remunerations for this Stateland/school trust land. The license issued to Defendant Avista Corporation in 2000 by the Federal Energy Regulatory Commission provides for compensation to be paid to the United States for use of federal land, but does not require any compensation to Montana for the use of the State-owned riverbed and banks.

26. Thompson Falls Dam is located on the Clark Fork River and is owned by Defendant PPL Montana. The Clark Fork River is a navigable river. Thompson Falls Dam was built in 1913. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

27. Ryan Dam is located on the Missouri River, northeast of the city of Great Falls, Montana, at River Mile 2110, and is owned by Defendant PPL Montana. The Missouri River is a navigable river. Montana never has been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their

appurtenances are located, and is presently not receiving lease payments or other remunerations for this land.

28. Cochrane Dam is located on the Missouri River, northeast of Great Falls, Montana, at River Mile 2111 and is owned by Defendant PPL Montana. The Missouri River is a navigable river. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

29. Holter Dam is located on the Missouri River, approximately 43 miles northeast of Helena, Montana, and is owned by Defendant PPL Montana. The Missouri River is a navigable river. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

30. Morony Dam is located on the Missouri River, northeast of Great Falls, Montana, at River Mile 2105 and is owned by Defendant PPL Montana. The Missouri River is a navigable river. Montana never has been reimbursed for the value of the State lands/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

31. Rainbow Dam located on the Missouri River, approximately 6 miles northeast of Great Falls, Montana, at River Mile 2115, and is owned by Defendant PPL

Montana. The Missouri River is a navigable river. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

32. Black Eagle Dam is located on the Missouri River, adjacent to Great Falls, Montana, at River Mile 2118 and is owned by Defendant PPL Montana. The Missouri River is a navigable river. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

33. Hauser Dam is located on the Missouri River, approximately 14 miles northeast of Helena, Montana, and is owned by Defendant PPL Montana. The Missouri River is a navigable river. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

34. Mystic Lake Dam is located on Rosebud Creek and is owned by PPL Montana. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

35. Madison Dam is located on the Madison River approximately five miles northeast of Ennis, Montana and is owned by Defendant PPL Montana. The Madison

River is a navigable river. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for this land.

36. Bigfork Dam is located on the Swan River and is owned by Defendant PacifiCorp. The Swan River is a navigable river. Montana has never been reimbursed for the value of the State land/school trust land or interest upon which the dam and power site or their appurtenances are located, and presently does not receive lease payments or other remunerations for said land.

37. Title to the bed and banks of each of the foregoing navigable streams on which the foregoing dams are located passed to the Montana upon its admission to the Union in 1889.

38. The owners and/or operators of oil and gas exploration and development facilities and other uses and occupants of these lands pay Montana for their use of the bed and banks of navigable streams. The Defendants in this case have failed to pay and do not pay the fair market value for the use of the bed and banks of the streams, set forth above.

39. Montana has been injured by the Defendants' lack of compensation for use of State lands/school trust lands as power sites, including but not limited to those sites listed above, and are entitled to an award of damages including, but not limited to: compensatory and remedial damages, and an award of interest to avoid injustice.

COUNT ONE
(UNJUST ENRICHMENT)

40. Intervenor/Plaintiff incorporates the foregoing allegations herein, as if set forth in full.

41. Defendants have received, through occupation and use of State lands/school trust lands, substantial financial benefits by using these State lands/school trust lands as power sites.

42. Defendants wrongfully have failed to reimburse Montana for use of its lands as power sites, in violation of Mont. Code Ann. § 7-4-208, which requires annual or semi-annual payments of full market value for the use of any State land as a power site. Through this unlawful use and occupation of State land/school trust lands, Defendants unjustly have been enriched at the expense of Montana.

43. As a result of this unjust enrichment, Montana has suffered injury that entitles Montana to restitution and/or other compensation in amounts as will be just to compensate Montana fully, including an award of interest on all such sums to avoid injustice.

COUNT TWO
(NEGLIGENCE-POWER COMPANIES)

44. Intervenor/Plaintiff incorporates the foregoing allegations herein, as if set forth in full.

45. Defendants have a duty to determine the rightful owners of properties to be used for power sites and to reimburse/compensate such owners for the use of those sites. Defendants negligently have failed to determine the proper owners of property on which Defendants' dams are located and negligently have failed to reimburse those owners, namely Montana.

46. As a result of this negligence, Intervenor/Plaintiff has been damaged and Defendants are liable for restitution and/or compensatory damages to Montana, including an award of interest on all such sums to avoid injustice.

COUNT THREE
(DECLARATORY RELIEF)

47. Intervenor/Plaintiff incorporates the foregoing allegations herein, as if set forth in full.

48. Intervenor/Plaintiff is entitled to a declaration of this Court that at all times in question, Montana has been, and continues to be, the rightful owner of the beds and banks of all navigable waters in Montana not otherwise reserved by the United States, and that these lands are State lands and/or school trust lands held in trust for the benefit of Montana's school trust.

49. Intervenor/Plaintiff is further entitled to a declaration of this Court that, pursuant to Mont. Code Ann. § 77-4-208, that Defendants, as owners of dams situated upon the beds and/or banks of navigable rivers in Montana, must pay to Montana an annual lease payment or other remuneration of full market value for the use of such land

or any interest in such land and that such payment be used for the benefit of Montana's school trust.

COUNT FOUR

(UNCOMPENSATED USE OF STATE LAND)

50. Intervenor/Plaintiff incorporates the foregoing allegations herein, as if set forth in full.

51. Defendants have entered upon and used State land/school trust lands as power sites. Montana law, including Mont. Code Ann. § 77-4-208, requires Defendants to pay to Montana the full market value of these lands or other interests in these lands used by them in the form of annual or semi-annual lease payments.

52. Defendants have failed to make such payments to Montana and, as a result of this failure, Montana has not been compensated and Montana has been injured. This injury entitles Montana to an award of damages in the amount of these unpaid leases, including an award of interest on all such sums to avoid injustice.

COUNT FIVE

(TRESPASS)

53. Intervenor/Plaintiff incorporates the foregoing allegations herein, as if set forth in full.

54. Defendants have entered upon and occupy State lands/school trust lands without compensating Montana. Defendants have constructed power sites upon State

land/school trust lands without compensating Montana. These actions have caused harm to Montana.

55. Defendants' actions constitute a trespass and this trespass also is a continuing trespass.

56. Defendants' trespass entitles Montana to an award of compensatory damages and/or restitution, including an award of interest on all such sums to avoid injustice.

PRAYER FOR RELIEF

WHEREFORE, Intervenor/Plaintiff prays for judgment in its favor as follows:

1. A Declaration by this Court that Montana is the rightful owner of the beds and banks of all navigable waters in Montana, not specifically reserved by the United States, including the portions of those lands upon which Defendants' dams and power sites and appurtenances are located; and that Montana holds such lands in trust for the benefit of the school trust;

2. A Declaration by this Court that as a result of the occupation of State lands/school trust lands by the Defendants' dams, power generators and related facilities and appurtenances, that Defendants must compensate Montana for past and present use of these lands and that Defendants' failure to compensate Montana is unlawful;

3. Pursuant to a judgment by this Court, that Defendants are legally obligated to compensate Montana for their past and present use of State lands/school trust lands, an award of damages, in the form of compensation to Montana, in an amount to be determined at trial, for Defendants use of State lands/school trust lands without payment to Montana;

4. For damages in the form of compensation to Montana, in an amount to be determined at trial, for Defendant's trespass upon State lands, including benefit derived;

5. For damages, in the form of compensation to Montana, in amount to be determined at trial, for Defendants' negligence in breaching its duty to compensate Montana for their use of State lands/school trust lands;

6. For restitution, in the form of compensation to Montana, in amount to be determined at trial, as a result of Defendants' unjust enrichment, to the detriment of Montana, by virtue of its past, present, and ongoing failure to compensate Montana for their use of State lands/school trust lands;

7. An award of interest as required to avoid injustice;

8. An award of Intervenor/Plaintiff's reasonable attorney fees, expert witness fees, and costs; and

9. For such other relief to which Intervenor/Plaintiff may be entitled under law, or which is just and equitable.

JURY DEMAND

Intervenor/Plaintiff hereby demands a trial by jury of all claims so triable.

Respectfully submitted this 7th day of May, 2004.

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By: _____
BRIAN M. MORRIS
Solicitor

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Complaint of Intervenor/Plaintiff to be mailed to:

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DATED: _____
Brian M. Morris